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No. 93-1331

IN THE
# Supreme Court of the United States
OCTOBER TERM, 1993

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QUINN-L CAPITAL CORPORATION, *et al.*,
*Petitioners,*

v.

ROYAL INSURANCE COMPANY OF AMERICA and
ROYAL LLOYDS OF TEXAS,
*Respondents.*

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**On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit**

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## BRIEF FOR THE RESPONDENTS IN OPPOSITION

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## QUESTIONS PRESENTED

1. Whether the Court of Appeals correctly held that the citizenship of an unincorporated Lloyds association is not dependent on the citizenship of its statutory attorney-in-fact, because the attorney-in-fact is not a "member" of the association as required by *Carden v. Arkoma Assocs.*, 494 U.S. 185 (1990), but is merely an agent of the underwriters who are the association's members.

2. Whether the Court of Appeals correctly applied the principles articulated in *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140 (1988), and *Atlantic Coast Line R.R. v. Brotherhood of Locomotive Engineers*, 398 U.S. 281 (1970), to hold that the district court could enjoin relitigation in state court of matters decided by a prior federal judgment.

3. Whether the Court of Appeals correctly held that the district court could continue to adjudicate this declaratory judgment action, despite the filing of state court litigation raising the same issues, where (i) this action was brought to enforce a prior federal judgment, (ii) the new issues were injected into this action by the defendants themselves as affirmative defenses, and (iii) significant proceedings had occurred in the district court before the state court litigation was filed.

4. Whether the Court of Appeals correctly concluded that no genuine dispute of material fact had been demonstrated with respect to the privity between the two groups of defendants, and thus that one defendant group could be held on summary judgment to be bound by a prior judgment against the other defendant group.

## PARTIES TO THE PROCEEDING

The parties to the proceeding are as stated in the petition. Pursuant to Supreme Court Rule 29.1, respondent Royal Insurance Company of America is wholly owned by The Royal Group, Inc., which is, in turn, wholly owned by Royal Insurance plc London. Royal Insurance Company of America has no subsidiaries (other than wholly owned subsidiaries). Respondent Royal Lloyds of Texas is an unincorporated association whose attorney-in-fact is Royal Lloyds, Inc.

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## BRIEF FOR THE RESPONDENTS IN OPPOSITION

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### STATEMENT OF THE CASE

This case is part of what the Court of Appeals termed a "tangled web of litigation" created by petitioners that has ensnared the parties and the federal and state courts in Texas for seven years. Pet. App. A56. All of this litigation centers on the petitioners' attempts to reap windfall damages as a result of their lost investments in real-estate limited partnerships during the 1980s. After pursuing the partnerships' organizers, lawyers and accountants, petitioners eventually set their sights on the respondent insurance companies, which had insured the partnerships' organizers against very different risks.

The insurance companies sought in this case to establish, once and for all, that they have no liability to peti-

tioners. The lower courts have now agreed that no such liability exists and that the time has come to put an end to this protracted litigation.

**A. The Federal Investor Actions**

During the 1970s and early 1980s, the Quinn-L entities ("Quinn-L") and their principal, S. Mark Lovell, organized and promoted a number of real-estate limited partnerships. Pet. App. A26-A27. Mr. Lovell is the sole shareholder of every Quinn-L entity except Quinn-L Capital; as to Quinn-L Capital, he is the sole owner of its voting stock and the beneficial owner of all of its assets, if any. *Id.* at A27 & n.1.

In 1987, after the limited partnerships had been foreclosed upon and Mr. Lovell had declared personal bankruptcy, Quinn-L was sued by 157 of its investors ("the Investors") in twenty-six separate lawsuits in the U.S. District Court for the Northern District of Texas. *Id.* at A26. These suits were consolidated before Judge Barefoot Sanders.

The Investors' complaints initially named as defendants not only Quinn-L, but also several law firms, accounting firms and individuals associated with Quinn-L. *Id.* The Investors asserted similar claims against Mr. Lovell in his personal bankruptcy proceeding. *Id.* at A27 n.2.

**B. The First Federal Declaratory Judgment Action**

In response to the Investors' lawsuits, Quinn-L demanded that its insurers, respondents Royal Insurance Company of America and Royal Lloyds of Texas (collectively, "Royal"), assume its defense. Pet. App. A26. Royal offered to do so, while reserving its right to contest coverage, and Quinn-L agreed to that arrangement. *Id.*

On May 10, 1988, Royal filed a federal declaratory judgment action against Quinn-L to establish that its

insurance policies did not impose any duty to defend or indemnify Quinn-L against the Investors' claims. *Id.* This action was also assigned to Judge Sanders.

The Investors moved to intervene in the declaratory judgment action on June 6, 1988. *Id.* The court denied the motion on the grounds that the Investors were not real parties in interest to the coverage dispute and that their interest in establishing coverage was adequately represented by Quinn-L. *Id.*

On April 3, 1989, the non-party Investors and Quinn-L filed a joint motion to substitute the Investors' counsel for Quinn-L's counsel in the declaratory judgment action. R. A-7 Ex. 32. The Investors and Quinn-L represented to the court that they had "reached an agreement in principle for settlement of the Quinn-L Litigation." R. A-7 Ex. 32 at 2-3. The Investors had previously concluded a settlement with Mr. Lovell personally, whereby he agreed to "cooperate" with the Investors in their lawsuits against Quinn-L. Pet. App. A26-A27.

On April 14, 1989, the court granted Royal's motion for summary judgment against Quinn-L. *Id.* at A27. The court held that the Investors had "allege[d] no injury to tangible property which could constitute an 'occurrence' " under the policy terms, and that "none of the [alleged] losses constitutes 'property damage' as required by the policy." *Id.* at A27-A28. The court further held that the Investors had not shown that their alleged "personal injuries (in the form of mental anguish) were caused by an 'occurrence.' " *Id.* at A28. The court formally entered summary judgment against Quinn-L on April 27, 1989, reiterating that the Investors had not "as a matter of law . . . state[d] a claim within the coverage provided by the policies." *Id.* at A27-A28; Supp. App. 66.

**C. The Dismissal of the Federal Investor Actions**

On August 3, 1989, the Investors moved the district court to dismiss all of their pending lawsuits against Quinn-L, again representing that the Investors and Quinn-L had "reached an agreement in principle for settlement of [their] claims." Pet. App. A28. On August 28, 1989, pursuant to the Investors' request, the court dismissed all of their claims against Quinn-L. *Id.*

**D. The Court Enters a Final Declaratory Judgment**

On September 8, 1989, the district court entered a final declaratory judgment for Royal in its action against Quinn-L. Pet. App. A28. The court reiterated that the Investors had not "allege[d] an 'occurrence,' as defined by the policies" and had not "alleged 'property damage,' or 'personal injury' as defined by the policies." *Id.* at A28, A39-A40. The judgment was not appealed. *Id.* at A28.

**E. The *Adkisson* Action in Dallas County Court**

Five days later, on September 13, 1989, the Investors refiled their state-law claims against Quinn-L in Dallas County court in an action styled *Adkisson v. Quinn-L Capital Corp.* Pet. App. A28-A29. In October 1989, Mr. Lovell, through his personal attorney Broocks Greer, asked Royal to defend Quinn-L in the *Adkisson* action. *Id.* at A29. Royal responded by denying that any coverage existed for the Investors' claims. *Id.* Royal nonetheless offered, as in the earlier federal actions, to provide a defense under a reservation of rights. *Id.*

While awaiting Quinn-L's response to its offer, Royal retained attorney Coyt Randal Johnston to represent Quinn-L in *Adkisson. Id.* Mr. Johnston filed a general denial to the *Adkisson* complaint on Quinn-L's behalf. *Id.*

On January 9, 1990, Mr. Lovell refused Royal's offer of a defense under a reservation of rights, even though

Mr. Lovell, himself an attorney, understood that neither he nor Quinn-L had any resources with which to hire counsel. *Id.* Royal immediately instructed Mr. Johnston to take no further action on Quinn-L's behalf in *Adkisson*. *Id.*

Royal and Mr. Johnston repeatedly notified Mr. Lovell and Mr. Greer that Quinn-L would have to retain counsel to replace Mr. Johnston. *Id.* at A30. But neither Mr. Lovell nor Mr. Greer took any steps to retain counsel for Quinn-L. R. K-2 Ex. 19. Mr. Johnson filed a motion to withdraw, which was granted on May 30, 1990. Pet. App. A30.

On May 21, 1990, after having been served with Mr. Johnston's motion to withdraw, the Investors served 600 requests for admissions on Quinn-L. *Id.* at A30; Supp. App. 74. Mr. Johston answered the requests, denying "by far the majority of them." Pet. App. A30.

On June 1, 1990, after his motion to withdraw had been granted, Mr. Johnston wrote to Mr. Lovell concerning the requests for admissions, explaining that the answers could be amended, if appropriate. R. K-1 Ex. 14. In a letter replying to Mr. Johnston, Mr. Lovell professed to have "no responsibility" for Quinn-L's defense in *Adkisson*, citing his earlier "settlement with the [Investor] plaintiffs." R. K-1 Ex. 16. He forwarded Mr. Johnston's letter to his own counsel and to the Investors' counsel. R. K-1 Ex. 15; R. C-4 at 241-42.

On June 27, 1990, the Investors moved to strike Quinn-L's responses to the requests for admissions, asserting that Mr. Johnston had prepared them without consulting Quinn-L. Pet. App. A30. Although Mr. Lovell was aware that the motion had been filed and was scheduled for hearing, he did not obtain counsel for Quinn-L, or ratify or amend the answers, or otherwise oppose the motion. R. K-3 Ex. 29 at 9-10; R. C-4 at 262. A visiting judge granted the Investors' unopposed motion to deem the denied requests "admitted." Pet. App. A30.

When the action was called for trial on August 7, 1990, Mr. Lovell still had not obtained counsel for Quinn-L, even though he was aware of the trial schedule. Accordingly, no appearance was made on behalf of Quinn-L. *Id.* Offering to the court nothing more than the 600 deemed admissions and their own calculation of damages, the Investors immediately obtained a default judgment against Quinn-L of $741 million. *Id.* Only $16 million of that amount was attributed to the Investors' actual out-of-pocket investment losses. R. K-2 Ex. 25.

**F. The Second Federal Declaratory Judgment Action**

On March 9, 1990, while the *Adkisson* action was pending, Royal filed this action to enforce the district court's earlier declaratory judgment on policy coverage. Pet. App. A32. On August 15, 1990, one week after the *Adkisson* judgment, Quinn-L filed an answer raising a number of affirmative defenses, including the affirmative defenses that Royal was barred by "estoppel," "waiver" and "contributory negligence" from obtaining its requested relief. *Id.*; Supp. App. 8. Quinn-L based these defenses on Royal's alleged representations about the scope of the first declaratory judgment and on Royal's and Mr. Johnston's alleged conduct in the *Adkisson* action.

**G. Mr. Lovell Assigns Quinn-L's Claims to the Investors**

On September 4, 1990, Mr. Lovell, on behalf of Quinn-L, executed an agreement assigning Quinn-L's claims, if any, against Royal to the Investors. Pet. App. A31. In return, the Investors promised to pay Mr. Lovell 5% of any future recoveries against Royal in excess of the $741 million *Adkisson* judgment. *Id.*

**H. The Actions in Cameron County Court**

The Investors then proceeded to the Cameron County court in Brownsville, Texas, to file two separate actions against Royal.

### 1. *The Investors' Cameron County Liability Action*

The Investors filed the first of these actions on September 4, 1990, the same day that they entered into the assignment agreement with Quinn-L. Pet. App. A31. In that action, the Investors sought, "[a]s judgment creditors and assignees of the Quinn-L Entities," to hold Royal "responsible for the payment of the Judgment entered [in *Adkisson*]." R. K-3 Ex. 26 at 14. They argued that Royal was liable to them "for the entirety of the judgment" under the terms of its insurance policies. Pet. App. A44-A45. They also contended that Royal had wrongfully denied coverage and an unconditional defense in *Adkisson* and had "hire[d] counsel whose conduct was the direct cause of the adverse judgment"—acts that were characterized as "gross negligence," as a violation of Royal's "duty of good faith and fair dealing," and as grounds for holding that Royal was barred by waiver or estoppel from denying coverage. R. K-3 Ex. 26 at 15-17. The Investors sought damages against Royal of $2.2 billion, of which Mr. Lovell would receive $74 million as a result of his agreement with the Investors. R. K-3 Ex. 26.

On September 5, 1990, even before Royal was served with the complaint, the Investors obtained a trial date of December 10, 1990. Pet. App. A31. In addition, they quickly filed a motion for summary judgment, which was set to be heard on November 8, 1990. *Id.*

### 2. *The Investors' Declaratory Judgment Action*

The same Investors filed a second action in the same Cameron County court on September 17, 1990, seeking a declaratory judgment that Royal was liable to them for the *Adkisson* judgment. *Id.* The Investors again claimed that the damages awarded to them in *Adkisson* were for "injuries which are covered by the relevant insurance policies issued by [Royal]." R. K-3 Ex. 27 at 11-12. They also asserted that Royal "has waived its right to, or is estopped from denying coverage under the

policies because of its conduct with respect to the Quinn-L Entities." *Id.*

**I. The Injunction Against the Cameron County Actions**

On November 30, 1990, the district court in this action preliminarily enjoined Quinn-L and the Investors from prosecuting the two Cameron County actions. Supp. App. 56-106. The court found that the Cameron County actions were "just another attempt by the Investor Plaintiffs to evade the jurisdiction of this Court, to emasculate its ability to decide the present case, and to evade its prior judgments." *Id.* at 103. The Investors and Quinn-L appealed.

**J. The District Court Grants Summary Judgment**

On December 20, 1991, while the preliminary injunction appeal was pending, the district court granted Royal summary judgment on all of the parties' claims and affirmative defenses. Supp. App. 1-33. The court held that its prior declaratory judgment conclusively determined that Royal's policies imposed no duty to defend or indemnify Quinn-L against the sorts of claims that the Investors asserted in *Adkisson*. Supp. App. 17-21. The court then held that, because the Investors were already in privity with Quinn-L during the first declaratory judgment action, they as well as Quinn-L were bound by the resulting judgment. Supp. App. 21-22. The court also held that the affirmative defenses of waiver, estoppel and contributory negligence failed as a matter of law on multiple grounds, and thus provided no basis for precluding the summary judgment sought by Royal. Supp. App. 22-29.

**K. The Fifth Circuit in *Royal I* Decides the Preliminary Injunction Appeal**

On May 5, 1992, the Court of Appeals for the Fifth Circuit issued its opinion on the preliminary injunction appeal, affirming in part, reversing in part and remanding

for further proceedings. *Royal Ins. Co. v. Quinn-L Capital Corp.*, 960 F.2d 1286 (5th Cir. 1992) (*"Royal I"*) (Pet. App. A25-A57).

The Fifth Circuit first held that the district court had the authority under the "protect or effectuate judgments" exception to the Anti-Injunction Act, 28 U.S.C. § 2283 (1988), to enjoin relitigation of whether Royal's insurance policies provided coverage against the Investors' claims. Pet. App. A38-A46. The court further held that the Investors as well as Quinn-L were bound by the first declaratory judgment. *Id.* at A46-A49.

The Fifth Circuit then held that the preliminary injunction against state court litigation of the parties' remaining claims—*i.e.*, the waiver, estoppel and tort claims that were raised as affirmative defenses in the district court—could not be sustained under the Anti-Injunction Act's "in aid of jurisdiction" exception. *Id.* at A49-A54. The court explained that "[t]he Cameron County court posed no threat to the district court's continuing jurisdiction to decide [these] claims," since both courts could concurrently adjudicate the claims until one or the other entered final judgment. *Id.* at A52.

Finally, the Fifth Circuit denied the Investors' and Quinn-L's request to vacate the summary judgment that had been entered while the appeal was pending. *Id.* at A54-A56. The court explained that vacating the orders would be an "academic exercise," since "the district court would be free to re-enter its orders the moment after they were vacated." *Id.* at A56. And the court added that this result was equitable, given that the Investors and Quinn-L "created this tangled web of litigation by seeking to evade the effect of the first declaratory judgment action." *Id.*

**L. The District Court Enters Final Declaratory and Injunctive Relief**

On July 1, 1992, the district court granted Royal's application for entry of final declaratory relief against

Quinn-L and the Investors. Supp. App. 51. The court also entered a permanent injunction that barred Quinn-L and the Investors from relitigating any of the claims or issues decided in either the present action or the first declaratory judgment action. *Id.* at 48. The Investors and Quinn-L again appealed.

**M. The Fifth Circuit in *Royal II* Affirms the District Court's Declaratory Judgment and Injunction**

On September 27, 1993, the Fifth Circuit unanimously affirmed the district court's declaratory judgment and permanent injunction against state court relitigation of the matters decided by that judgment. *Royal Ins. Co. v. Quinn-L Capital Corp.*, 3 F.3d 877 (5th Cir. 1993) (*"Royal II"*) (Pet. App. A1-A24).

The Fifth Circuit initially held that subject-matter jurisdiction exists over the entire case, given the complete diversity of citizenship between Royal Insurance and Royal Lloyds, on the one hand, and Quinn-L and the Investors, on the other. Pet. App. A7-A9. The court rejected the argument that the Texas citizenship of Royal Lloyds' attorney-in-fact is relevant to the jurisdictional inquiry, recognizing that the attorney-in-fact is, under Texas law, a mere "agent" of Royal Lloyds' underwriter-members. *Id.* at A8-A9.

The Fifth Circuit then held that the district court was not barred from rendering a declaratory judgment on the affirmative defenses of waiver, estoppel and contributory negligence merely because those defenses were identical to claims pending in the Cameron County actions. *Id.* at A10-A19. The court explained that "principles of federalism and comity" could not be offended by such a declaratory judgment in the circumstances of this case: Royal had sought declaratory relief not "to interfere with the state courts" but instead "to enforce a prior federal judgment"; Quinn-L itself had injected the affirmative defenses

into the case; and "significant proceedings" had taken place in federal court before the Cameron County actions were filed. *Id.* at A16-A17. Moreover, because the district court could enter the declaratory judgment, the court also could, under the Anti-Injunction Act's "protect or effectuate judgments" exception, enjoin relitigation of matters decided by that declaratory judgment. *Id.* at A10-A11.

The Fifth Circuit went on to hold, as it had in *Royal I*, that the district court's first declaratory judgment resolved any dispute as to whether Royal's insurance policies provided coverage for the Investors' alleged injuries. *Id.* at A22-24. The court further held that the Investors, although not parties to the first declaratory judgment action, were bound by that judgment by virtue of their privity with Quinn-L. *Id.* at A21-A22. Finally, the court rejected Quinn-L's and the Investors' challenge to the disposition on summary judgment of the affirmative defenses of waiver, estoppel and contributory negligence. *Id.* at A24.

On November 5, 1993, the Fifth Circuit denied the Investors' and Quinn-L's Suggestion for Rehearing En Banc, which was also treated as a petition for panel rehearing, with no judge requesting a poll. *Id.* at A58.

## REASONS FOR DENYING THE PETITION

The decision of the court below is correct. It does not conflict with any decision of this Court or of any other court of appeals. Accordingly, review by this Court is not warranted.

### I. THE COURT OF APPEALS' DECISION AS TO THE CITIZENSHIP OF RESPONDENT ROYAL LLOYDS DOES NOT MERIT THIS COURT'S REVIEW

Petitioners first argue (Pet. 8-9, 12-17) that review by this Court is necessary in order to clarify, for purposes of diversity jurisdiction, the citizenship of a small number

of unincorporated Lloyds associations—specifically, those Lloyds associations that do business in Texas and thus are required by state law to appoint a Texas resident as their attorney-in-fact in the state. Simply to articulate this exceedingly narrow question is to demonstrate its unsuitability for review by this Court. There is simply no diversity jurisdiction issue of general importance in this case.

Petitioners do not, and cannot, assert that any conflict exists among the courts of appeals as to the citizenship of a Lloyds association. Nor do petitioners offer any reason to expect that such a conflict will arise in the future. They do not, for example, identify any state outside the Fifth Circuit that requires a Lloyds association to appoint a resident of the state as its attorney-in-fact, or that imposes the same obligations on the attorney-in-fact as does Texas. And in all events, they have no grounds for suggesting that another court would reach a different result or, perhaps as importantly, why this Court should enter the fray before any such conflict arises.

Moreover, while petitioners claim that the decision below is inconsistent with *Carden v. Arkoma Assocs.*, 494 U.S. 185 (1990), they are plainly wrong. In *Carden*, the Court reiterated the well-settled rule that the citizenship of an unincorporated association "depends on the citizenship of 'all the members.'" 494 U.S. at 195 (quoting *Chapman v. Barney*, 129 U.S. 677, 682 (1889)). Here, the Court of Appeals recognized that "[t]his case turns on the question of who constitutes a 'member' of a Lloyds plan insurance association." Pet. App. A7. While petitioners may disagree with the Fifth Circuit's resolution of that question, they have no basis to argue that the court below failed to faithfully follow the holding in *Carden*.

Petitioners object (Pet. 14-15) that the Court of Appeals acted inconsistently with *Carden* in analyzing whether an attorney-in-fact is a "member" of a Lloyds association—a question that the court resolved by refer-

ence to the Texas Insurance Code's treatment of the attorney as a mere agent of the underwriters who form the association. Pet. App. A8-A9. Specifically, they claim that the Court of Appeals' analysis ignores the attorney's supposed role in the "operation and control" of the association. Pet. 13. But *Carden* itself rejected the argument that whether or not a person is a "member" of an association for diversity purposes should turn on the degree to which he exercises "management powers." 494 U.S. at 192-96. Although petitioners complain (Pet. 15-16) that an inquiry into "operation and control" is necessary to ensure that diversity jurisdiction serves its intended purposes, the *Carden* Court rejected such an argument, explaining that issues such as who is, or is not, a "member" of any of the myriad non-corporate artificial entities created under state law are "more readily resolved by legislative prescription than by legal reasoning." *Id.* at 197.

Petitioners' reliance on *Navarro Savings Ass'n v. Lee*, 446 U.S. 458 (1980), for a contrary proposition is misplaced. As the *Carden* Court recognized, *Navarro* dealt not with the citizenship of the litigants, who were eight individual trustees of a business trust, but instead with whether those trustees, as opposed to the trust beneficiaries, were the "real parties to the controversy." 494 U.S. at 191. Accordingly, just as "*Navarro* had nothing to do with the citizenship of the 'trust,' since it was a suit by the trustees in their own names," *id.* at 192-93, *Navarro* has nothing to do with the citizenship of an unincorporated association such as Royal Lloyds, which has sued in its own name. *See id.* at 194 (recognizing that *Navarro* "is irrelevant, since it involved not a juridical person but the distinctive common-law institution of trustees").

In sum, the Court of Appeals' narrow, case-specific decision that Royal Lloyds is not a citizen of Texas is consistent with this Court's authorities and does not conflict with the decision of any other court of appeals. There is

thus no reason for this Court to revisit the Fifth Circuit's conclusion that subject-matter jurisdiction exists here.[1]

## II. THE COURT OF APPEALS' APPLICATION OF THE ANTI-INJUNCTION ACT'S "RELITIGATION" EXCEPTION DOES NOT MERIT THIS COURT'S REVIEW

Petitioners next argue (Pet. 8-10, 17-22) that certiorari should be granted to revisit the propriety of the district court's injunction against relitigation in state court of the policy coverage issues decided in the first declaratory judgment action. They contend (Pet. 17) that, in assessing whether the district court's earlier declaratory judgment decided the same policy coverage issues that are presented in this case and in the Cameron County cases, the Fifth Circuit "employed a dramatically opposite rule of construction" than the one employed by this Court in *Atlantic Coast Line R.R. v. Brotherhood of Locomotive Engineers*, 398 U.S. 281 (1970), and *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140 (1988). But each of petitioners' four "rule[s] of construction" applicable to Anti-Injunction Act cases was, in fact, expressly recognized and fully honored by the Fifth Circuit in this case. Accordingly, review by this Court plainly is unwarranted.

*First*, petitioners observe (Pet. 17-18) that the Anti-Injunction Act permits only an injunction that "falls within one of [its] three specifically defined exceptions," which cannot "be enlarged by loose statutory construc-

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[1] Subject-matter jurisdiction is also justified in this case as an exercise of ancillary jurisdiction—a ground accepted by the Court of Appeals with respect to Royal's coverage claims (Pet. App. A34-A35), but not with respect to petitioners' affirmative defenses (*id.* at A5-A6). If ancillary jurisdiction is to serve its intended purpose of enabling litigants "to secure or preserve the fruits and advantages" of a prior federal judgment, *Local Loan Co. v. Hunt*, 292 U.S. 234, 239 (1934), a district court's ancillary jurisdiction should extend not only to requests to enforce the prior judgment, but also to affirmative defenses raised to such enforcement.

tion." *Atlantic Coast Line*, 398 U.S. at 286-87; *accord Chick Kam Choo*, 486 U.S. at 146. But the Fifth Circuit twice acknowledged this rule in its *Royal II* opinion, noting that "those [three] exceptions are exclusive and that federal courts may not craft new ones." Pet. App. A15 (citing *Atlantic Coast Line*, 398 U.S. at 286-87); *see also* Pet App. A10. The court went on to recognize, however, that the injunction here falls squarely within one of those three exclusive exceptions—*i.e.*, the "relitigation" exception for injunctions to "protect or effectuate [the court's] judgments," 28 U.S.C. § 2283 (1988). Pet. App. A10. This is thus not a case, as was *Atlantic Coast Line*, where the lower court has purported to create a new, non-statutory exception to the Act. *See* 398 U.S. at 286-87.

*Second*, petitioners observe that " '[a]ny doubts as to the propriety of a federal injunction against state court proceedings should be resolved in favor of permitting the state courts to proceed.' " Pet. 19 (quoting *Atlantic Coast Line*, 398 U.S. at 298). But the Fifth Circuit expressly acknowledged this rule as well in *Royal II*, noting the Act's "presumption in favor of denying an injunction." Pet. App. A-15; *see also id.* at A38. The court below simply concluded that no doubts could exist as to the propriety of a relitigation injunction in this case, because "[t]he *only* reasonable reading of the first declaratory judgment opinion" was one that decided the precise coverage issues presented in this case and in the Cameron County actions. *Id.* at A23 (emphasis added). This case thus presented a situation entirely unlike the one in *Atlantic Coast Line*, where an earlier judgment could not be construed as deciding issues raised in a later case without "stretch[ing] the content of the words well beyond the limits of reasonableness." 398 U.S. at 290.

*Third*, petitioners assert that a court can enjoin relitigation only of what was " 'actually litigated and decided,' " and not of what the earlier order was merely " '*intended* to say.' " Pet. 19 (quoting *Chick Kam Choo*, 486 U.S.

at 148). Again, the Fifth Circuit expressly acknowledged this "actually litigated and decided" requirement. *See* Pet. App. A22; *see also id.* at A8 (citing *Chick Kam Choo,* 486 U.S. at 148). As to the "actually decided" component of the requirement, the court held that the earlier declaratory judgment decided not only, as petitioners maintain, that the Investors had not alleged property damage or personal injury in their then-pending federal suits, but also that the Investors had not alleged an "occurrence" or "accident" arising out of the failure of the Quinn-L partnerships. *Id.* at A23. And as to the "actually litigated" component, the court held that the question whether the Investors had stated an "occurrence" or "accident" within Royal's policy coverage "actually was litigated" in the first declaratory judgment action. *Id.* In short, contrary to petitioners' argument, the Fifth Circuit was not "render[ing] a *post hoc* judgment as to what [an] order was *intended* to say," *Chick Kam Choo,* 486 U.S. at 148, but rather was examining the district court's orders and the parties' pleadings in the earlier action to determine what was, in fact, decided.

*Finally,* petitioners assert (Pet. 21) that "the parties' conduct is relevant" to determine the propriety of a relitigation injunction. As noted above, however, in deciding what was "actually litigated" in the first declaratory judgment action, the Fifth Circuit did, in fact, examine the parties' conduct as evidenced by their pleadings in that action. Pet. App. A23. This assertion does not, therefore, advance petitioners' cause.

Petitioners appear to suggest (Pet. 21) that the court below was also required to give determinative weight to certain out-of-court statements by Royal that are claimed to reflect a narrower interpretation of the declaratory judgment. But no such requirement can be discerned in this Court's decisions. This Court has indicated only that consideration of parties' in-court conduct may be appropriate to resolve "lingering doubts" as to the meaning of

a decision. *Atlantic Coast Line*, 398 U.S. at 290. The Fifth Circuit obviously had no such "lingering doubts" here, given its conclusion that the declaratory judgment was susceptible of "only [one] reasonable reading." Pet. App. A23.

Petitioners also erroneously contend (Pet. 19) that the injunction against relitigation of the coverage issues is inappropriate because the Cameron County actions supposedly involve "different issues" and were "brought by persons who were not parties to [that] action." But the Fifth Circuit specifically held in *Royal I*, and necessarily reaffirmed in *Royal II*, that the coverage issues in Cameron County are identical to the coverage issues in the first declaratory judgment action. Pet. App. A44-A46. The Fifth Circuit also specifically held that the Investors, while not parties to the first declaratory judgment action, were bound by the resulting judgment by virtue of their privity with Quinn-L. *Id.* at A21-A22; *see also id.* at A46-A49. It is thus evident that, although petitioners contend that the Fifth Circuit ignored the "rule[s] of construction" applicable under the Anti-Injunction Act's "relitigation" exception, petitioners' real complaint is that the Fifth Circuit applied those very rules to reach a result with which they disagree.

Nor does the particular relitigation injunction in this case offend the principles of federalism and comity underlying the Anti-Injunction Act. Indeed, as the Fifth Circuit has recognized, such an injunction actually promotes federalism and comity principles, because "nothing would be as productive of friction between the state and the federal courts as to permit a state court to interpret and perhaps to upset . . . a judgment of a federal court." *Jacksonville Blow Pipe Co. v. Reconstruction Fin. Corp.*, 244 F.2d 394, 400 (5th Cir. 1957). In short, petitioners' fact-specific challenge to the relitigation injunction here, which presents no conflict with

the decisions of this Court or the other courts of appeals, is obviously unworthy of this Court's attention.

## III. THE COURT OF APPEALS' DECISION THAT DECLARATORY RELIEF IS PERMISSIBLE IN THE CIRCUMSTANCES OF THIS CASE DOES NOT MERIT THIS COURT'S REVIEW

Petitioners further contend (Pet. 9-11, 22-28) that review is necessary to prevent litigants from "circumvent-[ing]" the Anti-Injunction Act. They apparently claim that such circumvention occurs whenever a party files a declaratory judgment action in federal district court and, after an action raising the same issues is later filed in state court, continues to litigate the federal action to a final judgment. The Fifth Circuit's contrary decision, which held simply that the district court could continue to exercise its jurisdiction over the pending federal action in the particular context of this case, is fully consistent with the decisions of this Court and other courts of appeals. Therefore, no further review is warranted.

This Court reiterated only last Term that "federal courts and state courts often find themselves exercising concurrent jurisdiction over the same subject matter and when that happens a federal court generally need neither abstain (*i.e.*, dismiss the case before it) nor defer to the state proceedings (*i.e.*, withhold action until the state proceedings have concluded)." *Growe v. Emison*, 113 S. Ct. 1075, 1080 (1993); *see also Colorado River Water Conserv. Dist. v. United States*, 424 U.S. 800, 817 (1976) ("Generally, as between state and federal courts, the rule is that 'the pendency of an action in the state court is no bar to proceedings concerning the same matter in the Federal court having jurisdiction.' ") (quoting *McClellan v. Carland*, 217 U.S. 268, 282 (1910)). Accordingly, contrary to the fundamental premise of petitioners' assertions, federalism and comity principles do not generally bar a federal court from proceeding to judg-

ment simply because an action raising similar issues is subsequently filed in state court.

Moreover, while this Court has recognized certain abstention doctrines under which federal courts are to abstain or defer to state proceedings, *see Growe*, 113 S. Ct. at 1080, none of these doctrines has any application to this case. This case does not, for example, interfere with the State of Texas's ongoing prosecutorial or regulatory activities. Nor does it present "difficult questions of state law bearing on important matters of state policy." *Id.*; see Pet. App. A16 (recognizing that petitioners were urging "a new type of abstention"). This case does not, therefore, fit within any of the recognized categories of cases in which this Court has said that district courts should not exercise jurisdiction over a pending controversy.

The decision below does not, as petitioners suggest (Pet. 25), conflict with *California v. Grace Brethren Church*, 457 U.S. 393 (1982), which held only that the Tax Injunction Act's prohibition on suits to "enjoin, suspend or restrain" the collection of state taxes bars declaratory as well as injunctive relief. The Court's principal reason for applying the Tax Injunction Act to declaratory as well as injunctive relief was "the very language of the Act," which does not speak solely in terms of injunctions, but instead itself "suggests that a federal court is prohibited from issuing declaratory relief in state tax cases." *Id.* at 408. The Court also emphasized that construing the Tax Injunction Act to bar declaratory relief was necessary to serve the Act's purpose of preventing " 'interfer[ence] with so important a local concern as the collection of taxes.' " *Id.* at 408-09 (quoting *Rosewell v. LaSalle Nat'l Bank*, 450 U.S. 503, 522 (1981)).

No similar circumstances are presented here. Petitioners invoke not the Tax Injunction Act but the Anti-Injunction Act, a statute that speaks only of "injunc-

tion[s]." 28 U.S.C. § 2283; *see Perez v. Ledesma*, 401 U.S. 82, 129 n.18 (1971) (Brennan, J., concurring in part, dissenting in part) (noting "congressional intent that the statutory term 'injunction' in § 2283 not be read to include declaratory judgments"). Moreover, while a declaratory judgment invalidating a state tax implicates significant federalism and comity concerns by threatening to interfere with vital state functions, a declaratory judgment in a dispute among private parties typically does not.

In any event, contrary to petitioners' argument, the Fifth Circuit did not intimate in this case that the federalism and comity concerns underlying the Anti-Injunction Act would *never* bar a district court from issuing a declaratory judgment coupled with a relitigation injunction. The court held only that such relief was permissible in the unusual circumstances of this case, given the confluence of three distinct factors:

- *First*, the Fifth Circuit noted that Royal brought this action "to enforce a prior federal judgment" concerning the scope of its policy coverage, and not "to interfere with the state courts." Pet. App. A16.
- *Second*, the Fifth Circuit noted that Quinn-L, not Royal, "injected new state claims into the federal action" as affirmative defenses to enforcement of the prior federal judgment. *Id.*
- *Third*, the Fifth Circuit noted that "Royal sought relief in federal court nearly six months before the state actions against Royal were filed," and that petitioners commenced the actions in state court only after "significant proceedings" had taken place both in this action and, of course, in the prior declaratory judgment action. *Id.*

It was the combination of these three factors that persuaded the Fifth Circuit that "little, if any, threat to our traditions of comity and federalism" was posed by the district court's deciding all of the claims, issues and de-

fenses presented in the case, and then enjoining their relitigation in state court. *Id.* at A17. Indeed, any contrary result would, as the Fifth Circuit recognized, allow litigants to "defeat[] federal jurisdiction merely by filing a state court action," and thereby engage in wasteful manipulation of the federal and state court systems. *Id.*

Petitioners thus err in asserting (Pet. 26) that the decision below conflicts with *Omaha Property & Casualty Insurance Co. v. Johnson*, 923 F.2d 446 (6th Cir. 1991), and *Tempco Electric Heater Corp. v. Omega Engineering Inc.*, 819 F.2d 746 (7th Cir. 1987). Neither *Omaha Property* nor *Tempco* was brought "to enforce a prior federal judgment." Pet. App. A16. In neither case were the previously unadjudicated issues injected into the declaratory judgment action by the defendant as affirmative defenses. *Id.* And in neither case had "significant proceedings" taken place in the district court before the competing action was even filed. *Id.* There is simply no reason to conclude that, in a case that presented each of these factors, the Sixth and Seventh Circuits would reach a result any different from the Fifth Circuit's result here.[2]

Nor does any conflict exist between this case and *Kidder, Peabody & Co. v. Maxus Energy Corp.*, 925 F.2d

[2] Indeed, the Sixth Circuit recognized in *Omaha Property* that whether a district court may entertain a declaratory judgment action in the face of a related state court action is a matter left to the district court's discretion tempered by considerations of equity, comity and federalism. 923 F.2d at 448. The Sixth Circuit's decision that the district court had abused its discretion in *Omaha Property* turned on two considerations not present here: The state court had already issued an interlocutory ruling on the same matter that was before the district court, and the case involved "a previously undetermined question of state law." *Id.* at 447-48. The Seventh Circuit's decision in *Tempco*, which concerned whether a district court had discretion in a declaratory judgment action to defer to another district court, *see* 819 F.2d at 747, is plainly inapposite. *See Colorado River*, 424 U.S. at 817 (noting difference between "state-federal concurrent jurisdiction and wholly federal concurrent jurisdiction").

556 (2d Cir.), *cert. denied*, 111 S. Ct. 2829 (1991), which likewise presented none of the three factors identified by the Fifth Circuit in this case. Moreover, the Second Circuit's analysis in *Maxus* turned on the fact that the district court had no independent basis of subject-matter jurisdiction over the state-law claims. Instead, the state-law claims were merely pendent to federal claims that had already been disposed of by the district court. *See id.* at 564. No similar circumstances exist here.

Petitioners complain (Pet. 27-28) that the Fifth Circuit's allowing the case to be adjudicated to final judgment is "particularly offensive," because the state court could not proceed during much of that period as a result of the preliminary injunction that was partially reversed in *Royal I*. But the Fifth Circuit found nothing inequitable about such a result in the unique circumstances of this case, precisely because the petitioners themselves had "created this tangled web of litigation by seeking to evade the effect of the first declaratory judgment action." Pet. App. A56. That petitioners, not surprisingly, perceive this result to be unfair to them does not, of course, justify review of this case-specific issue.[3]

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[3] No conflict exists in this regard with *Hayes Industries, Inc. v. Caribbean Sales Assocs.*, 387 F.2d 498, 499-500 (1st Cir. 1968), which prevented a district court from entering a final judgment that could effectively moot the appeal of its preliminary injunction against state court litigation. Here, in contrast, the district court did not enter final judgment until well after the Fifth Circuit's decision in *Royal I*, which could thus be taken into account by both the district court and the Fifth Circuit in considering Royal's request for permanent declaratory and injunctive relief.

Nor does the decision here conflict with *Pyrodyne Corp. v. Pyrotronics Corp.*, 847 F.2d 1398, 1403 (9th Cir.), *cert. denied*, 488 U.S. 968 (1988), which involved a district court's ability to adjudicate precisely the same issues that are pending on appeal. The preliminary injunction issues before the Fifth Circuit in *Royal I* were, as the Fifth Circuit recognized (Pet. App. A9-A10), distinct from the summary judgment issues reviewed in *Royal II*.

In sum, the Fifth Circuit's decision affirming the district court's authority to issue declaratory and injunctive relief in the circumstances of this case is correct and does not conflict with any decision of this Court or of any other court of appeals. Accordingly, no valid reason exists for this Court to review the Fifth Circuit's decision here.[4]

## IV. THE COURT OF APPEALS' DECISION THAT THE INVESTOR PETITIONERS ARE BOUND BY THE FIRST DECLARATORY JUDGMENT DOES NOT MERIT THIS COURT'S REVIEW

Petitioners finally contend (Pet. at 11-12, 28-30) that, in affirming the district court's summary judgment determination that the Investors were in privity with Quinn-L and thus could be bound by the earlier declaratory judgment, the Fifth Circuit deprived the Investors of a "due process right to their own day in court." This argument improperly attempts to create a legal issue out of a simple factual issue and is, in any event, erroneous.

Petitioners do not, and cannot, dispute that a judgment may be binding on "a person, although not a party, [who]

[4] The injunction against state court litigation of the waiver, estoppel and negligence claims is also justifiable under the Anti-Injunction Act's "in aid of jurisdiction" exception. 28 U.S.C. § 2283. This Court has recognized that this exception may properly be used "to prevent a state court from so interfering with a federal court's consideration or disposition of a case as to seriously impair the federal court's flexibility and authority to decide that case." *Atlantic Coast Line*, 398 U.S. at 295; *see Capital Serv., Inc. v. NLRB*, 347 U.S. 501, 504-06 (1954). This exception has been invoked by the lower federal courts to protect their ability to adjudicate complex controversies, especially where the court had already rendered a final judgment or otherwise taken charge of the controversy prior to the filing of the state court action. *See, e.g., Battle v. Liberty Nat'l Life Ins. Co.*, 877 F.2d 877, 880-82 (11th Cir. 1989); *United States v. District of Columbia*, 654 F.2d 802, 808-11 & n.16 (D.C. Cir.), *cert. denied*, 454 U.S. 1082 (1981); *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 501 F.2d 383, 384 (4th Cir. 1974) (per curiam). This is plainly such a case.

has his interests adequately represented by someone with the same interests who is a party." *Martin v. Wilks*, 490 U.S. 755, 762 n.2 (1989). They merely contend (Pet. 29) that the Fifth Circuit should not have allowed the district court to decide the privity question on summary judgment, ostensibly because "the summary judgment evidence . . . raises a factual dispute on the privity question" that supposedly was not addressed by the district court. It is thus evident that petitioners' "due process" claim is, in reality, nothing more than a routine challenge to the district court's decision to grant summary judgment on the particular record of this case. This Court's resources are not appropriately addressed to such fact-specific challenges.

In all events, contrary to petitioners' unsupported suggestion, both the district court and the Court of Appeals reviewed the evidence on the privity issue. The Fifth Circuit's conclusion, on *de novo* review of the record, that "[t]here is no material issue of fact as to privity" between the Investors and Quinn-L is correct. Pet. App. A22. Quinn-L's interest in establishing insurance coverage in the first declaratory judgment action was identical to the Investors' interest. Moreover, at the time that the first declaratory judgment action was being litigated, Quinn-L and the Investors had already established a cooperative relationship. For example, the Investors had entered into a settlement agreement with Quinn-L's principal, Mr. Lovell, which required him to provide "assistance and cooperation" to the Investors. *See id.* at A26-A27. The Investors and Quinn-L had even represented to the court in the first declaratory judgment action that they had reached an "agreement in principle for settlement of the Quinn-L Litigation" and sought the substitution of the Investors' counsel for Quinn-L's existing counsel. R. A-7 Ex. 32 at 2-3. It was thus not contrary to the record evidence, much less a denial of due process, to enter summary judgment on the issue of privity between Quinn-L and the Investors. This fact-bound ruling, like the other

rulings challenged by petitioners, does not merit this Court's review.

## CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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